# IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 29 OF 2003

THE COMMISSIONER OF INCOME TAX, PANAJI-GOA. ....Appellants

Versus

M/S DEMPO MINING CORPORATION PVT.LTD.,PANAJI-GOA. ....Respondents

SHRI S.R. RIVANKAR WITH,SHRI SUDIN USGAONKAR

Coram:- R. J. KOCHAR &
P. V. HARDAS, JJ.

Date:- 15th December, 2003

P.C.:

Only three questions have been articulated in the Memo of Appeal which arise for consideration of this Court, being substantial questions of law, in these Appeals under section 260-A of the Income Tax Act, 1961. The same read thus:-

A) Whether on the facts and in the circumstances of the case, the ITAT was justified in holding that the assessee is entitled for deduction on investment allowance u/s 32 A of the IT Act, in respect of Machinery used in Mining activity ignoring the fact that the assessee is engaged in extraction and processing of Iron ore, not amounting to manufacturing or production of any article or thing?

B) Whether on the facts and in the circumstances of the case, the ITAT was right in law to hold that provisions of section 43B of the IT Act, were not applicable on the amount of Royalty payable not being fee, or tax?
C) Whether the findings of the ITAT that royalty cannot be treated as fee, for the purpose of disallowance u/s 43 B is contrary to the law laid down by the Hon'ble Supreme Court in "Gorelal Dubey vs. CIT' (248 ITR 3)?"
2. Having considered the rival submissions, it is seen that insofar as the question regarding allowability of investment allowance on machinery is concerned, that issue stands answered by the unreported decision of our High Court in Tax Appeal Nos. 66/2002, 5/2003 and 6/2002, decided on 16th July, 2003. In the circumstances, we find no reason to examine that question afresh in these appeals. On the other hand, we are bound by the earlier decision of our High Court referred to above in the leading case of Commissioner of Income Tax vs. M/s. Sesa Goa Ltd..
3. Insofar as the question regarding the application of the provisions of Section 43 B of the Act in relation to the royalty, whether it can be treated as fee, even this question stands finally concluded in fovour of the Revenue in view of the decision of the

Apex Court as reported in 248 ITR 3 in the case of Gorelal Dubey vs. Commissioner of Income tax. In the circumstances, that question will have to be answered in favour of the Revenue.

4. Accordingly, these Appeals partly succeed to the extent of questions B & C. No order as to costs.

R. J. KOCHAR, J.

P. V. HARDAS, J.